

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 76-5206

HARRY ROBERTS

V.

STATE OF LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

OPPOSITION OF STATE OF LOUISIANA, RESPONDENT

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STATEMENT OF THE CASE

Shortly after 6:30 p.m. on Mardi Gras day, 1974, Officers John Tobin and Dennis McInerney of the New Orleans Police Department, who were assigned to patrol and answer radio signals in car 504, received a radio signal of a shooting at 1628 Pauger Street in New Orleans, and at once drove toward that address. When they arrived at the corner of Pauger and Burgundy they were flagged down by Mrs. Theresa Dorsey, who gave them a description of the person they were looking for (beige jacket, blue jeans, green shirt, and red bandana with knot tied in the back), and who pointed in the direction in which the criminal was fleeing. Proceeding in the direction indicated, Officers Tobin and McInerney came upon Harry Roberts at the corner of Kerlerec and Burgundy. The accused was just turning the corner

and was removing a red bandana from his head. The officers drove after Roberts and finally caught up with him on Rampart Street between Kerlerec and Esplanade. They parked the police car, and as Officer Tobin got out of the vehicle he was shot in the leg and in the head by the accused. When Officer McInerney stepped out he was mortally wounded and fell to the ground, dying almost immediately. Although severely wounded, Officer Tobin managed to get out his service revolver and shoot Roberts in his left leg, whereupon the accused ran off and took refuge in the residence of Mrs. Mable Domingo at 914 Kerlerec, where he was captured by the police shortly thereafter. Tr. 1-36; 118-122.

The Grand Jury for the Parish of Orleans indicted Harry Roberts for the first degree murder of Dennis McInerney, a police officer. R. 21. The accused was tried, convicted, and sentenced to death. R. 1-22. He appealed to the Louisiana Supreme Court, which affirmed his conviction and sentence. State v. Roberts, 331 So.2d 11 (La. 1976). He is presently petitioning this Honorable Court for a Writ of Certiorari, urging three issues.

I.

Petitioner's first contention concerns the imposition on him of the death penalty. It appears that under this Court's decision in Stanislaus Roberts v. Louisiana, no. 75-5844, decided June 28, 1976, this sentence cannot be carried out unless, of course, this Court grants Louisiana's Application For Rehearing

and modifies its former holding.

II.

Petitioner's second contention objects to the failure of the trial court to order pretrial inspection of the murder weapon, a blue steel revolver, which was abandoned by Roberts in his flight and which was found by investigating officers lying on the ground in a rear alley near the Domingo residence, where Roberts had taken refuge.

The record which was filed in this case in the Louisiana Supreme Court, and to which counsel for petitioner makes frequent reference in his petition, does not contain the Motion For Oyer of the revolver and bullets in question, but the State concedes that it was filed and denied by the trial judge. However, counsel for petitioner, Mr. Garland Rolling, admitted during oral argument of this case in the Louisiana Supreme Court that after the trial court denied the motion the Assistant District Attorney in the case offered to permit the defense to inspect and test, before trial, the weapon and bullets in question, and that the defense did not accept this offer because the accused expressed no interest in such a procedure. Consequently the State of Louisiana believes that this second contention is moot, as the accused was not in fact denied pre-trial inspection of these objects.

Alternatively, the State of Louisiana believes that for the reasons set out by the Louisiana Supreme Court in its

opinion herein the accused could in no way have been harmed by the denial of this motion--that is, the defense did not deny that the pistol found in the alley nearby the shooting had fired the fatal shot, but rather contended that Roberts had no connection with the weapon.

In the further alternative, the State of Louisiana respectfully submits that denial of pretrial inspection of evidence in a state criminal case does not present a substantial federal question unless the accused can show that there was no adequate opportunity for such inspection later during the trial itself, at the time the prosecution used or offered the evidence in question as part of its case. Thus, in the present case if Roberts had seriously doubted that the bullet which killed the police officer came from the gun in question, he could during the trial have asked to have the bullet inspected by his own expert, and this could have been done without undue delay of the trial by the simple expedient of having his expert present in court with a dual microscope. See State v. White, 321 So.2d 491 (La. 1975).

III.

Petitioner's third contention is that he was denied equal protection of the laws because the prosecutor asked him, while he was testifying before the jury, whether he had in 1970 plead guilty to theft and shoplifting in "case 144-714 'D' of Juvenile Court". Upon objection by defense counsel the trial

judge told the accused not to answer the question and instructed the jury to disregard it, but denied defense counsel's Motion For Mistrial. Tr. 335-336.

Thereafter, during further cross-examination by the prosecutor Roberts admitted that he was convicted in Municipal Court in 1973 for possession of stolen automobile tires, Tr. 336-337, and was convicted in Criminal District Court for possession of a stolen automobile, Tr. 337. These latter questions were permissible because under La. R.S. 15:495 evidence of conviction of crime is admissible for the purpose of impeaching the credibility of a witness, a practice which is prevalent in most jurisdictions and which has been recognized by this Court as serving a legitimate purpose. See Spencer v. Texas, 385 U.S. 554 (1967).

The State of Louisiana respectfully contends that although the trial court was technically correct in refusing to permit inquiry into Roberts' juvenile record because juvenile crimes are euphemistically viewed as "delinquency adjudications" and not as convictions, that the court's refusal to permit the question to be answered, and his direction to the jury to disregard the prosecutor's question cured any possible prejudice in view of the fact that Roberts then went on to testify that he was convicted in 1973 in Municipal Court for possession of a stolen car--that is, the jury in this proceeding heard through testimony which was admissible under La. R.S. 15:495 that the accused had a criminal record for theft, and therefore the prosecutor's question about his juvenile record for theft and shop-

lifting suggested nothing about Roberts which the jury did not subsequently learn from a valid source. Thus any error which may have occurred was harmless at most under Article 921 of the Louisiana Code of Criminal Procedure. Further, juvenile records are not sacrosanct. See, for example, Davis v. Alaska, 415 U.S. 308 (1974), in which this Court held that the accused should have been permitted to cross-examine a key prosecution witness concerning his juvenile record in order to impeach the witness' credibility.

CONCLUSION

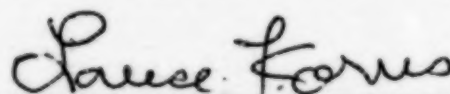
The State of Louisiana respectfully asks this Honorable Court to deny the Petition For Certiorari here being sought, or at most to limit any relief afforded petitioner to a ruling that under Stanislaus Roberts v. Louisiana the death penalty imposed on him cannot be carried out.

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